

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DENNIS NELSON,

Petitioner,

v.

Case No. 08-C-0086

RICK RAEMISCH,

Secretary of the Wisconsin Department of Corrections,

Respondent.

AMENDED ORDER

On December 7, 2009, this court entered a decision and order denying the petition for a writ of habeas corpus. On December 1, 2009, Rule 11(a) of the Rules Governing § 2254 Cases was amended. According to the amendment, the court must issue or deny a certificate of appealability "when it enters a final order adverse to the applicant." The court now amends its December 7, 2009, Decision and Order with the following so as to comply with the Rule 11(a).

A certificate of appealability may "only issue if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, the petitioner must demonstrate that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, and n. 4). When a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim,

a certificate of appealability “should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Id.

In this case, reasonable jurists would not find the court’s decision to deny the petition on procedural or substantive grounds debatable or wrong. Thus, the court will deny a certificate of appealability as to all of the petitioner’s claims.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that a certificate of appealability shall not issue as to any of the petitioner’s claims.

Dated at Milwaukee, Wisconsin this 31st day of December, 2009.

BY THE COURT:

s/ Patricia J. Gorence
PATRICIA J. GORENCE
United States Magistrate Judge